

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

RECEIVED & FILED

05 NOV 28 PM 4:40

United States District Court		District	JUDICIAL DISTRICT OF PUERTO RICO
Name of Movant	JUAN ENRIQUE CINTRON-CARABALLO	Prisoner No.	14955-069
Place of Confinement	FCC-USP Coleman, POBX 1033 Coleman, FL 33521-1033		

UNITED STATES OF AMERICA

V. JUAN ENRIQUE CINTRON-CARABALLO
(name under which convicted)**MOTION**

1. Name and location of court which entered the judgment of conviction under attack US DISTRICT COURT-
JUDICIAL DISTRICT OF PUERTO RICO, San Juan, Puerto Rico 00918

2. Date of judgment of conviction March 09, 2000 (Sentencing)

3. Length of sentence Life Imprisonment and \$100.- special assessment.

4. Nature of offense involved (all counts) Conspiracy 21 USC 846 (one count)

5. What was your plea? (Check one)

- (a) Not guilty ☒ ~~x~~
(b) Guilty ☐
(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

Not applicable

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☒ ~~x~~
(b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

AO 243 (Rev. 5/85)

9. If you did appeal, answer the following:

(a) Name of court First Circuit Court of Appeals

(b) Result Conviction affirmed.

(c) Date of result November 20, 2003

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court United States Supreme Court

(2) Nature of proceeding Petition for writ of certiorari

(3) Grounds raised Violations of Discovery and Federal Rules of Evidence Requirements by Government Counsel.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☒ No ☒

(5) Result Not applicable

(6) Date of result Petition denied on November 29, 2004.

(b) As to any second petition, application or motion give the same information:

(1) Name of court First Circuit Court of Appeals

(2) Nature of proceeding Motion to Recall Mandate
Based on New Law: Blakely v Washington.

(3) Grounds raised Unconstitutional enhancement of sentence in violation of Sixth Amendment right to jury trial.

AO 243 (Rev. 5/85)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result Motion denied without oral argument.(6) Date of result December 10, 2004

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒(2) Second petition, etc. Yes ☐ No ☒

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Direct Appeal: No motion for reconsideration was filed due to
ineffectiveness of appellate counsel.Motion to recall mandate: No motion for reconsideration was filed
due to lack of legal expertise by 'pro se' litigant.

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

AO 243 (Rev. 5/85)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL

Supporting FACTS (state *briefly* without citing cases or law) _____

Denial of right to testify by trial counsel. See attached
memorandum of points and authorities.

Failure to interview/present defense witness FELIX MATOS.

See memorandum of points/authorities.

B. Ground two: INEFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL.

Failure to raise valid constitutional issues regarding the
unlawful sentencing enhancements.

Supporting FACTS (state *briefly* without citing cases or law): _____

See attached memorandum of points/authorities.

C. Ground three: INEFFECTIVE ASSISTANCE OF COUNSEL ON PETITION FOR
WRIT OF CERTIORARI TO SUPREME COURT OF THE UNITED STATES.

Supporting FACTS (state *briefly* without citing cases or law): _____

See attached memorandum of points/authorities.

AO 243 (Rev. 5/85)

D. Ground four: CONSTITUTIONAL RIGHT TO RELIEF BASED ON UNITED STATES
V. BOOKER, 543 US (2005) Sixth Amendment Right to Jury Trial.

Supporting FACTS (state *briefly* without citing cases or law): _____

See attached memorandum of points/authorities.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

(1) Ineffective assistance of counsel: per Supreme Court rulings this
claim cannot reasonably be raised until after trial/direct appeal-
as the damage is not usually detected until after those actions.

(2) Relief under "BOOKER": This is based on new law which should be
afforded to the Petitioner as a constitutional right.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea RAFAEL ANGLADA-LOPEZ, Bar Number:P.R. 202508,
PO BOX 194886, San Juan, Puerto Rico, 00919

(c) At trial RAFAEL ANGLADA-LOPEZ, Same as above,
Tel (787)250-0917 Fax (787) 765-8679

(d) At sentencing RAFAEL ANGLADA-LOPEZ, Same as above.

AO 243 (Rev. 5/85)

(e) On appeal RAFAEL ANGLADA-LOPEZ, Same as previous listed.(f) In any post-conviction proceeding RAFAEL ANGLADA-LOPEZ, Same as above.
(petition to Supreme Court)

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

Not applicable

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

Not applicable.

(b) Give date and length of the above sentence: _____

Not applicable

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?


Yes ☐ No ☐Not applicable.

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Not applicable

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

NOV 15 / 2005
(date) NOV-15-2005

Signature of Movant

Juan Enrique Cintron-Caraballo

Petitioner, pro se.